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STATE OF MINNESOTA

STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION

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STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, grants, and supreme court and tax court decisions.

Volume 11 Printing Schedule and Submission Deadlines

Vol. 11 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
16	Monday 6 October	Monday 13 October	Monday 20 October
17	Monday 13 October	Monday 20 October	Monday 27 October
18	Monday 20 October	Monday 27 October	Monday 3 November
19	Monday 27 October	Monday 3 November	Monday 10 November

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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FOR LEGISLATIVE NEWS

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Perspectives—Publication about the Senate.

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Contact: Senate Public Information Office
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(612) 296-0504

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Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION also.

The PROPOSED RULES section contains:

- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
• Proposed amendments to rules already in existence in the Minnesota Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless requested by an agency.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
• Notice of adoption of emergency rules.
• Adopted amendments to emergency rules (changes made since the proposed version was published).
• Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 are included in a supplement published in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The State Register publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue range and cumulative issue. Includes: Issues 1-13, inclusive; Issue 39, cumulative for 1-39; Issues 14-25, inclusive; Issues 40-51, inclusive; Issue 26, cumulative for 1-26; Issue 52, cumulative for 1-52; Issues 27-38, inclusive.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

NOTE: This listing includes all proposed and adopted rules printed in this issue except emergency rules and errata for this issue. Please see those sections for the appropriate rule numbers.

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3510.9000 (proposed) 686

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9555.5105; .5205; .5305; .5405; .5415; .5505; .5605; .5705; .6105; .6115; .6125; .6145; .6155; .6165; .6167; .6175; .6185; .6195; .6205; .6215; .6225; .6233; .6245; .6255; .6265 (proposed) 650

9555.5100; .5200; .5300; .5400; .6100; .6200; .6300;

.6400 (proposed repealer) 650

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Permanent Rules Relating to Day Service Provider Billing

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 500 south, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on November 26, 1986 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process. Please note that this rule was published in the *State Register* on August 18, 1986, (CITE 11 S.R. 300), as a rule proposed for adoption without a public hearing. Twenty-five (25) requests for hearing were received during the public comment period. Therefore, in accordance with the requirements of Minnesota Statutes, section 14.25, this public hearing has been scheduled.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Allan W. Klein, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7609, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rule, part 9525.1290 proposed a change in day service billing procedures to meet federal directives. Developmental Achievement Centers (DAC's) will no longer be able to bill Medicaid directly for services provided to residents of Intermediate Care Facilities for persons with mental retardation (ICF/MR). Instead the bill must be verified by the ICF/MR where the client resides before the bill is submitted to the Commissioner.

A copy of the proposed rule amendment is attached to this notice.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, section 256B.501, subdivision 10.

There will be no costs to local public bodies in implementing this rule amendment.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Vicki Lear, Mental Retardation Division, 4th Floor, Centennial Office Building, St. Paul, MN 55155, telephone 612/296-2160. The rule is also available for viewing at each county welfare department in the state of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Lisa Rotegard, Mental Retardation Division, 4th Floor, Centennial Office Building, St. Paul, MN 55155, telephone 612/297-3829.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings. Print copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55105, telephone (612)296-5148.

Dated: 6 October 1986

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed

9525.1290 DAY SERVICE PROVIDER BILLING.

Subpart 1. **Billing requirements.** The day service provider must comply with the requirements in items A to ~~E~~ when submitting bills to the commissioner for reimbursement for the provision of day training and habilitation services.

A. to C. [Unchanged.]

D. Day service providers whose rates have been recommended under part 9525.1260, subpart 2 and approved under part 9525.1270, subpart 1, must submit bills to the commissioner using a procedural code available from the ~~Bureau of Income Maintenance~~ Health Care Programs Division.

E. Each bill from the day service provider must be verified by the ICF/MR where the client resides before the bill is submitted to the commissioner. A signature by authorized ICF/MR personnel constitutes verification by the ICF/MR that the services were provided on the days and for the charges specified.

Subp. 2. **Payment.** The commissioner shall pay the day service provider for bills submitted under subpart 1 using the payment procedures in Minnesota Statutes, sections 256B.041 and 256B.501, subdivision 5, paragraph (f). No payment will be made by the commissioner for day training and habilitation services not authorized under subpart 1, item E.

Subp. 3. [Unchanged.]

Withdrawal of Proposed Rule Relating to Nursing Home Operating Cost Payment Rate

Notice of Hearing for proposed rules relating to Nursing Home Operating Cost Payment Rate Determination, Minnesota Rules, parts 9549.0050 to 9549.0059, was published in the *State Register* on February 10, 1986 (CITE 10 S.R. 1656).

The hearing for this rule was cancelled in the *State Register* on March 10, 1986 (CITE 10 S.R. 1856).

The Department is now officially withdrawing the proposed rules published in the *State Register* on February 10, 1986.

The Department plans to publish new rules relating to the Nursing Home Operating Cost Payment rate as proposed rules in the *State Register* in December, 1986.

Dated: 9 October 1986

Leonard W. Levine, Commissioner
Department of Human Services

Department of Labor and Industry Workers' Compensation Division

Notice of Withdrawal of Proposed Repeal of Rules Governing Reimbursement of Supplementary Benefits

Notice is hereby given of the withdrawal of the proposed repeal of reimbursement of benefits rules, and of the Notice of Intent to Repeal Rules without a Public Hearing published at 10 State Register 2283-2284, May 12, 1986.

Dated: October 1, 1986

Steve Keefe, Commissioner
Department of Labor and Industry

Department of Labor and Industry

Correction to Rules Relating to Workers' Compensation; Fees for Medical Services

5221.2900 CHIROPRACTORS.

Subpart 1. [Unchanged.]

Subp. 2. **Medicine.** The following codes, service descriptions, and maximum fees apply to medical services.

Code	Service	Maximum Fee
09510	Routine initial examination, history and diagnosis	\$35.00
09501	Intermediate examination, history and diagnosis	42.00
09502	Extensive examination with history and diagnosis, complete history and physical examination of one or more systems, with report	70.00
09509	Home or nursing home visit with routine chiropractic examination and/or treatment which includes adjustment, manipulation, and/or one unit of conjunctive therapy for the same or new condition	\$50.00
09009	Same visit, each additional conjunctive or manipulative therapy per anatomical area of diagnosis, for example, neck, back, extremities—anatomical areas include associated soft tissues and nerves. Includes office visit	42.00
09504	Treatment, one unit of manipulative or conjunctive therapy (specify). Includes office visit	20.00
09505	Treatment, one unit of manipulative and one unit of conjunctive therapy (specify). Includes office visit	30.00
	Examinations—Includes History and Diagnosis, Office	
09520	New patient; brief examination	\$30.00
09521	intermediate	40.00
09522	extensive	65.00

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PROPOSED RULES

09530	Established patient; brief examination	30.00
09531	intermediate	40.00
09532	extensive	60.00
Chiropractic visit with manipulation/adjustment		
09540	Visit with manipulation/adjustment, initial; office	\$20.00
09541	Visit with manipulation/adjustment, subsequent; office	20.00
09542	Each additional manipulation/adjustment on same day; office, home, or nursing home	12.00
Home/nursing home visits		
09550	Chiropractic visit with manipulation/adjustment	\$40.00
Conjunctive therapy/modality—office, home, or nursing home		
09560	Application of hot pack	\$10.00
09561	Application of cold pack	12.00
09562	Diathermy	15.00
09563	Electrical stimulation, includes: muscle stimulation, low volt therapy, sine wave therapy, stimulin of peripheral nerve, galvanic	\$12.00
09564	Intersegmental motorized mobilization	22.00
09565	Muscle stimulation, manual	12.00
09566	Ultrasound therapy	11.00
09567	Traction	13.00
09568	Acupressure, manual or mechanical	12.00
09569	Acupuncture	15.00
09571	Colonic therapy	10.00
09572	Infrared—heat lamp	9.00
09573	Ultraviolet	16.00
09574	Trigger point therapy	12.00
09593	Diet consultation/instruction	20.00

Subp. 3. and 4. [Unchanged.]

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ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Agricultural Resources Loan Guaranty Board

Adopted Rules Relating to the Agricultural Resource Loan Guaranty Program

The rule proposed and published at *State Register*, Volume 10, Number 50, pages 2459-2466, June 9, 1986 (10 S.R. 2459) is adopted with the following modifications:

Rules as Adopted

1580.0400 CONTENTS OF APPLICATION.

Subpart 1. **Application forms.** The administrator shall prepare application forms for use by applicants. The application must provide the following information, unless waived by the board pursuant to subpart 2:

1. ~~pro forma cash flow statements for the first five years of project operations, including income statements and balance sheets~~ financial statements that include a balance sheet, an opening statement, and footnotes to the statements if available for the following time periods:

(1) financial statements for the previous three years, if applicable; and if unaudited, the statements must be signed by an authorized financial officer of the business making application;

(2) a current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared;

(3) federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership;

(4) pro forma cash flow statements for the first five years of project operation, including income statements and balance sheets;

1580.0900 ISSUANCE OF BONDS

Subp. 2. **Bond reserve.** ~~If the board determines, in light of market conditions, that a bond reserve fund is necessary to provide additional security for the bonds, then it must require the borrower to establish a reserve for the bonds. The reserve may come out of bond proceeds, in order to provide the additional security for the bonds as market conditions may require~~ A bond reserve fund must be established by the borrower in order to provide additional security for the bonds. The reserve may come out of bond proceeds. The amount of the reserve must not be less than one-half of the annual amount that would be required to amortize the entire amount of the bonds over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the bond issue resolution.

Energy and Economic Development Authority Department of Energy and Economic Development

Adopted Permanent Rules Relating to Hazardous Waste Processing Facility Loans

The rules proposed and published at *State Register*, Volume 11, Number 5, 125-128, August 4, 1986 (11 S.R. 125) are adopted as proposed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

ADOPTED RULES

Environmental Quality Board

Adopted Permanent Rules Relating to Environmental Review Programs

The rules proposed and published at *State Register*, Volume 11, Number 2, pages 31-35, July 14, 1986 (11 S.R. 31) are adopted as proposed.

Department of Natural Resources Parks and Recreation Division

Adopted Rule Relating to Special Daily Vehicle Permits for Groups

The rule proposed and published at *State Register*, Volume 10, Number 45, pages 2258-2259, May 5, 1986 (10 S.R. 2258) is adopted as proposed.

EMERGENCY RULES

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

- 1) that a free copy of the proposed emergency rule is available upon request from the agency;
- 2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
- 3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
- 4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

(Emergency rules published in this issue)

Department of Human Services

Extension of Emergency Rules Governing Medical Assistance and Third Party Payer Liability and Medical Assistance Assignment of Rights to Benefits from Liable Third Party Payers and Establishment of Paternity, *Minnesota Rules*, Parts 9505.0211 and 9505.0212 (Emergency)

Notice is hereby given that the above-entitled emergency rules which were effective on May 5, 1986 and published in the *State Register* on May 19, 1986 (CITE 10 S.R. 2320) are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled emergency rules will be in effect until April 30, 1987 unless they are superseded by permanent rules or legislative action. Please note, these emergency rules will be superseded by the adoption of Minnesota Rules, parts 9505.0070 and 9505.0071 (Medical Assistance Eligibility), expected to be adopted January 1, 1987.

Dated: 9 October 1986

Leonard W. Levine, Commissioner
Department of Human Services

Public Utilities Commission

Adopted Emergency Rules Relating to Code of Conduct

The rules proposed and published at *State Register*, Volume 11, Number 4, pages 105-108, July 28, 1986 (11 S.R. 105) are adopted with the following modifications:

Rules as Adopted, Emergency

7845.0100 [Emergency] DEFINITIONS.

Subp. 7. **Party.** "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding before the commission. A party includes a petitioner, complainant, intervenor, applicant, and respondent, and their attorneys, agents, or representatives.

Subp. 7 8. **Proceeding.** "Proceeding" means a formal or informal undertaking of the commission, on its own motion or otherwise, in which it seeks to resolve questions or issues raised in a complaint, in a petition, or during rulemaking.

7845.0700 [Emergency] PROHIBITED ACTIVITIES.

Subpart 1. **In general; exceptions.** A commissioner or employee shall not directly or indirectly solicit or accept for the commissioner or employee, or for another person, any compensation, gift, gratuity, favor, entertainment, meal, beverage, loan, or other thing of monetary value from a public utility or telephone company, or party, that exceeds nominal value. This prohibition does not apply to:

A. books or printed materials supplied on a complimentary basis for official use, when the value of each item does not exceed \$50 that are relevant to the official responsibilities of the commission; or

B. a meal or beverage served at or on the premises of an educational program devoted to improving the regulatory process or the administration of the commission, the value of which does not exceed \$15; or

C. a meal or beverage served during and at site investigations or negotiations, the value of which does not exceed \$15 that is open to other interested groups or state agencies under the same terms and conditions. Meals associated with the program must be paid for by a commissioner or employee who attends the program.

7845.0800 [Emergency] FUTURE EMPLOYMENT.

Subpart 1. **One-year restriction.** While employed with the commission or within one year after leaving it, a commissioner shall not accept employment with, receive compensation directly or indirectly from, or enter into a contractual relationship with a rate-regulated public utility or telephone company subject to rate regulation by the commission.

7845.0900 [Emergency] POSTEMPLOYMENT REPRESENTATION.

Subpart 1. **By commissioner.** A commissioner shall not represent a rate-regulated public utility or telephone company subject to rate regulation by the commission, formally or informally, before the commission for one year after leaving the commission. At no time shall a commissioner represent a party on a proceeding that was pending before the commission during that commissioner's term in office.

Subp. 2. **By employee.** For one year after leaving the commission, an employee shall not represent a rate-regulated public utility or telephone company subject to rate regulation by the commission, before the commission on a proceeding that the employee participated in during that employment with the commission.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration Building Codes and Standards Division

Notice of Solicitation of Outside Information or Opinions Regarding the Proposed Adoption of the 1987 Edition of the National Electrical Code

Notice is hereby given that the State Building Codes and Standards Division is seeking information or opinions from sources outside the agency in preparing to adopt the 1987 Edition of the National Electrical Code as adopted by National Fire Protection Association (NFPA), on May 21, 1986 and released by the STANDARDS COUNCIL July 10, 1986 and approved by the American National Standards Institute on July 30, 1986. The adoption of the rule is authorized by Minnesota Statutes, section 16B.59, which permits the commissioner of administration to adopt and amend the State Building Code, and section 16B.64 which authorizes the commissioner of administration to hold all state hearings in regard to the State Building Code including rules proposed by another state agency.

The State Building Codes and Standards Division requests information and opinions concerning the subject matter of the rule. This rule is intended to replace the 1984 Edition of the National Electrical Code. The National Electrical Code is administered and enforced by the State Board of Electricity and certain municipalities. Interested persons or groups may submit data or views on the subject matter of concern in writing. Written statements should be addressed to Margaret Opalinski, Building Codes and Standards Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101.

All statements of information and opinions shall be accepted until November 18, 1986. Any written material received by the State Building Codes and Standards Division shall become part of the rulemaking record to be submitted to the attorney general or the administrative law judge in the event that the rule is adopted.

Sandra J. Hale, Commissioner
Dept. of Administration

Department of Commerce Minnesota Joint Underwriting Association

Notice of Activation to Insure Specified Classes of Business, Public Hearing on Permanent Activation and Pre-Hearing Conference

Notice is hereby given that, pursuant to Minnesota Statutes, section 621.21, the Minnesota Joint Underwriting Association (MJUA) and the Market Assistance Plan (MAP) are activated to provide assistance to the following classes of business unable to obtain insurance from private insurers through ordinary means.

1. Bonds for Grain Buyers licensed pursuant to Minnesota Statutes, section 223.17,
2. Bonds for Public grain warehouse operators licensed pursuant to Minnesota Statutes, section 232.22,
3. Aircraft liability,
4. Bookstores,
5. Dating Services,
6. Electrical contractor bid bonds,
7. Motor vehicle dealer surety bonds,
8. Asbestos Abatement Contractors,
9. Architects,
10. Watershed District Manager—Public liability,
11. Lake aerating services,

12. Warehouseman's bond required by Minnesota Statutes, section 231.17,
13. Mental Health Hospital Chaplain.

The MJUA and MAP are activated to provide assistance to the above classes of business for a period of 180 days following publication of this notice. A public hearing will be held, for the purpose of determining whether activation should continue beyond 180 days, in Room 5, State Office Building, 435 Park Street, St. Paul, MN 55155, on December 16, 1986 at 9:00 A.M. and continuing until all interested persons and groups have had an opportunity to be heard. The hearing shall be governed by Minnesota Statutes Section 14.57-14.69 and by Minnesota Rules Parts 1400.5100-1400.8400, as amended (Amended Rules published at 9.SR.2276). Questions regarding procedure may be directed to Administrative Law Judge George Beck, 4th Floor Summit Bank Building, 310 4th Avenue South, Minneapolis, MN 55415, telephone (612) 341-7601. The authority for this proceeding is found in Chapter 455, Laws of Minnesota 1986 codified as Chapter 621 of Minnesota Statutes specifically sections 40 and 41 of Chapter 455 codified as Minnesota Statutes 621.21 and 621.22. (A copy of those sections follows this notice.)

Prior to the hearing a pre-hearing conference will be held at 1:30 p.m. on November 25, 1986 at the Office of Administrative Hearings, 4th Floor Summit Bank Building, 310 4th Avenue South, Minneapolis, MN 55415.

Chapter 455, Laws of Minnesota 1986 which created the Minnesota Joint Underwriting Association provides for temporary activation for 180 days by the Commissioner of Commerce. To extend the Minnesota Joint Underwriting Association's authority beyond the 180 day period a hearing must be held. Those classes of business for which the Minnesota Joint Underwriting Association was temporarily activated by this notice and by previously published notices, must prove, at the hearing, that they meet the statutory requirements for coverage by the Minnesota Joint Underwriting Association.

Among those requirements are:

- (1) That members of those classes are unable to obtain insurance through ordinary means;
- (2) That the insurance being sought is required by statute ordinance, or otherwise required by law, and is necessary to earn a livelihood or conduct a business, and serves a public purpose.

The classes of business specified in this notice and previously published notices must be shown to meet the statutory requirements or the Minnesota Joint Underwriting Association's authority to provide coverage to them will end 180 days from the date that notice of activation was published in the *State Register*.

The Department strongly suggests that any persons affected by this hearing or otherwise interested in the proceedings familiarize themselves with the requirements of Chapter 455 and the contested case procedures prior to the hearing and that they take such other steps as are appropriate to protect their interests. Any questions they may have as to how to proceed or how to participate at the hearing should be directed to the Administrative Law Judge prior to the hearing or to the pre-hearing conference.

All interested or affected persons will have an opportunity to participate at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in the manner set forth in the Rules pertaining to contested cases (Minnesota Rules 1400.5100-1400.8400).

Procedures and other requirements pertaining to the conduct of the hearing may be determined at the pre-hearing conference. Participation at the pre-hearing conference is strongly suggested.

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in the Minnesota Statute Section 10A.01, subdivision 11 as an individual:

- (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
- (b) Who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

Dated: 8 October 1986

Michael A. Hatch
Commissioner of Commerce

OFFICIAL NOTICES

Sec. 40 [621.21] [ACTIVATION OF MARKET ASSISTANCE PLAN AND JOINT UNDERWRITING ASSOCIATION.]

At any time the commissioner of commerce deems it necessary to provide assistance with respect to the placement of general liability insurance coverage on Minnesota risks for a class of business, the commissioner shall by notice in the *State Register* activate the market assistance plan and the joint underwriting association. The plan and association are activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 41. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are not necessary.

Sec. 41. [621.22] [HEARING.]

Subdivision 1. [ADMINISTRATIVE LAW JUDGE.] The commissioner shall forward a copy of the petition to activate the market assistance plan and the joint underwriting association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and administrative law judge assigned to hear the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

Subd. 2. [HEARING.] The commissioner of commerce shall publish notice of the hearing in the *State Register* at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required.

Subd. 3. [CONTESTED CASE; REPORT.] The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. [DECISION.] The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. [WAIVER OR MODIFICATION.] If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Minnesota Department of Health

Outside Opinion Sought on Proposed Rules Governing Registration of Plumber's Apprentices and Prescribing Reduced Fees for Plumbers Who Apply for Licensure in the Last Three Months of a Licensing Year

Notice is hereby given that the Department is seeking information or opinions from sources outside the Department in preparing to adopt rules governing the registration of plumber's apprentices and prescribing reduced fees for plumbers who apply for licensure in the last three months of a licensing year pursuant to Minnesota Statutes, section 14.10.

The adoption of the rules is authorized by Minnesota Statutes, section 326.401 which permits the Department to adopt and establish fees for the administration of the apprentice registration program, and section 144.122 which permits the commissioner of health to adopt rules prescribing reduced fees.

The Department requests information and comments concerning the subject matter of the rules. Interested or affected persons or groups may submit statements of information or comment in writing.

Written comments should be addressed to Milton R. Bellin, Division of Environmental Health, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440.

Any written material received by the Department shall become part of the rulemaking record to be submitted to the Attorney General.

All statements of information and comment shall be accepted until December 5, 1986.

Pollution Control Agency Solid & Hazardous Waste Division

Notice of Public Hearing on the Regional Management Plan of the Midwest Interstate Low-Level Radioactive Waste Commission

NOTICE IS HEREBY GIVEN that two public hearings concerning the draft Regional Management Plan of the Midwest Interstate Low-Level Radioactive Waste Commission will be held on Wednesday, November 12, 1986. The afternoon hearing will begin at 2:00 p.m. and the evening hearing will begin at 7:00 p.m. Both hearings will be held in Room 5 of the State Office Building, 435 Park Street, St. Paul, Minnesota 55155.

The purpose of the hearings will be to receive comments and address questions the public may have on the Commission's draft Regional Management Plan. All interested persons will be given an opportunity to offer testimony, either orally or in writing. The Commission and State will accept written comments until December 1, 1986. All comments and questions raised will be addressed by the Commission in a response document to be issued in January 1987.

Copies of the draft Regional Management Plan Summary and topical reports are available upon request for review before the hearing at the address below.

For additional information or report copies contact:

Mr. John N. Holck
Supervisor, Special Programs Unit
Program Development Section
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155
Telephone Number: 612/296-7743

Pollution Control Agency Solid & Hazardous Waste Division

Notice of Public Information Meeting Concerning Low-Level Radioactive Waste

Two information meetings concerning low-level radioactive waste will be held on Monday, November 10, 1986. The afternoon meeting will begin at 2:00 p.m. and the evening meeting will begin at 7:00 p.m. Both meetings will be held in Room 5 of the State Office Building, 435 Park Street, St. Paul, Minnesota 55155.

The purpose of the meetings will be to provide information and different perspectives on the draft Regional Management Plan of the Midwest Interstate Low-Level Radioactive Waste Commission. The meetings will consist of presentations providing an overview of the Midwest Compact, the host state selection process, the benefits program and the draft Regional Management Plan. They are intended to provide background information concerning these issues prior to the Midwest Interstate Compact Commission's public hearing on the draft Regional Management Plan on November 12, 1986.

Copies of the draft Regional Management Plan Summary and topical reports are available upon request for review before the meeting at the address below.

For additional information or report copies contact:

Mr. John N. Holck
Supervisor, Special Programs Unit
Program Development Section
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155
Telephone Number: 612/296-7743

OFFICIAL NOTICES

State Planning Agency Human Services Division

Task Force on Long-Term Care Health Planning Will Hold a Public Forum on the Need to Amend the Moratorium Law

The Task Force on Long-Term Care Health Planning will hold a public forum on Thursday, October 30, 1986, to provide an opportunity for nursing home industry representatives and consumers to testify regarding the need to amend the nursing home moratorium law to permit replacement or reconfiguration of beds. The meeting will be held in Room 118, State Capitol, Aurora Avenue, St. Paul, Minnesota 55155 at 1:00 p.m. and will conclude at 5:00 p.m.

Because of time limitations, oral testimony will be by invitation only. Written testimony is encouraged. If you are interested in presenting oral testimony, please contact the State Planning Agency at 612/296-3865. Written testimony should be addressed to John Dilley, State Planning Agency, 100 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration: Procurement Division

Contracts and Requisitions Open for Bid

Call 296-6152 for Referral to Specific Buyers.

<u>Commodity for Bid</u>	<u>Bid Closing Date at 2 pm</u>	<u>Department or Division</u>	<u>Delivery Point</u>	<u>Requisition #</u>
Compaq & Accessories	October 21, 1986	Jobs & Training	St. Paul	21-200-13521
Furnish & Install Roof Panels	October 21, 1986	State University	Mankato	26-071-17038
Barrister Equip.	October 21, 1986	Public Safety	St. Paul	07-500-39550
Barrister Access.	October 21, 1986	Public Safety	St. Paul	07-700-39551
Loose Leaf Binder Mechanisms	October 21, 1986	Correctional Facility	Oak Park Heights	Price Contract
Steel Shelving	October 21, 1986	Correctional Facility	Oak Park Heights	78-630-07035
Terminal (Trade In) Rebid	October 21, 1986	Community College	Minneapolis	27-153-10024
Video System	October 21, 1986	Community College	Coon Rapids	27-152-46361
Multiplexors	October 21, 1986	State University	St. Cloud	26-073-19157
Install & Remove Reagent Racks	October 21, 1986	Community College	Rochester	27-000-48216
Materials Test System	October 21, 1986	State University	Winona	26-074-11173
Oscilloscope	October 21, 1986	State University	St. Cloud	26-073-19154
Lumber & Related Material	October 21, 1986	Transportation	St. Paul	79-500-03050
Electronic Distance Measuring Instrument	October 21, 1986	Transportation	St. Paul	79-000-72202
Modular Office System & Accessories	October 21, 1986	PERA (Public Employees Retirement Association)	St. Paul	63-000-71357
Automobile	October 21, 1986	Jobs & Training	Plymouth	21-607-45299

<u>Commodity for Bid</u>	<u>Bid Closing Date at 2 pm</u>	<u>Department or Division</u>	<u>Delivery Point</u>	<u>Requisition #</u>
Drafting Tables & Desks	October 22, 1986	Community College	Hibbing	27-158-49540
Chimney Repair: Power Plant— MN Vets Home (opens 2:30 p.m.)	October 22, 1986	Veterans Home	Minneapolis	75-200-00462
Lumber	October 22, 1986	Natural Resources	Grand Rapids	29-003-07106
Slotted Steel Angles & related accessories	October 22, 1986	Various	Various	Price Contract
Clones	October 22, 1986	Vo-Tech. Education	St. Paul	36-000-06299
IBM Displaywrite	October 22, 1986	Transportation	St. Paul	79-000-71834
Trailers	October 22, 1986	Transportation	Various	79-382-01119 & etc.
Garbage Contract	October 22, 1986	Human Services Regional Treatment Ctr.	Cambridge	55-201-06659
Lathe	October 22, 1986	Vocational School	Sandstone	78-890-01929
Lathe	October 22, 1986	Administration: Plant Mgmt	St. Paul	02-307-51191
Trailer	October 23, 1986	Transportation	Oakdale	79-382-01122
PC System	October 23, 1986	Administration: Management Analysis	St. Paul	02-220-48801
Roofing & Siding Material	October 23, 1986	Transportation	St. Paul	79-050-18483
Hardware	October 23, 1986	Transportation	St. Paul	79-050-18484
Hazardous Waste Disposal	October 23, 1986	Agriculture	St. Paul	04-661-71651
Used Cargo Van	October 23, 1986	Jobs & Training	Grand Forks	21-603-45862
Modifications to Chevrolet Astro	October 23, 1986	Jobs & Training	White Bear Lake	21-606-68597
Hospital/Bedside Furn.	October 23, 1986	Oak Terrace Nursing Home	Minnetonka	02-310-14990
Uniform Rental Service	October 23, 1986	Central Motor Pool	St. Paul	02-514-50232
Laundry Service	October 24, 1986	Military Affairs	Little Falls	Price Contract
Rubbish Disposal Contract	October 24, 1986	Human Services Nursing Home	Minnetonka	Price Contract
Hazardous Waste Storage Cabinet	October 24, 1986	Natural Resources	St. Paul & Grand Rapids	29-000-44015
Misc. Lounge Furn.	October 24, 1986	State University	Bemidji	26-070-12027

**Department of Administration
Division of Risk Management**

Request for Proposals for Automobile Loss Adjusting Services

The Department of Administration, Division of Risk Management, wishes to retain a contractor to investigate and administer automobile claims on behalf of the State of Minnesota. The work will be funded by the Risk Management Act Laws, Chapter 455, Section 3. The product of the program will provide a professional and efficient claims administration service pursuant to the provisions and requirements of the Risk Management Division of the Department of Administration.

Scope of the Project

Investigation, administration, settlement and statistical services for all self insured automobile liability claims for the State of Minnesota.

Project Start and Completion Dates

The contract will become effective January 1, 1987 and will end July 1, 1989 subject to satisfactory performance.

Project Costs

It is anticipated that the cost of this project will not exceed \$375,000 for professional services and expenses.

STATE CONTRACTS

Copies of the Request for Proposal for contract services including the detailed project tasks are available from:

Frederick R. Johnson, Jr.
Director of Risk Management
Risk Management Division
Department of Administration
G-4 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155
Telephone Number (612) 296-1001

All proposals must be submitted to the Risk Management Division no later than 2:00 p.m. Wednesday, November 12, 1986.

SUPREME COURT CALENDAR

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

November 1987

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court next month. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning time, date, and location should be directed to: Clerk of the Appellate Courts, Rm 230, State Capitol, St. Paul, MN 55155.

Monday 3 November 1986—9:00 AM

C7-86-784

Donald Leason, et al,
Respondents,

vs.

Washington County, Minnesota, and
Washington County Board of
Commissioners, Defendants,
James Trudeau, et al,
Defendants,

Richard Hudella, et al,
Defendants,

Allan Palmer,
Appellant.

Collins, Buckley, Sauntry & Haugh
and Lori L. Nuebel

Austin & Roth and Daniel J. Roth

Pophaim, Haik, Schnobrich, Kaufman
& Doty and Frederick C. Brown and
Keith J. Halleland

Pophaim, Haik, Schnobrich, Kaufman
& Doty and Frederick C. Brown and
Keith J. Halleland.

Order Washington County

Whether the trial court correctly held that Washington County and the Washington County Board of Commissioners are not liable for the alleged tortious conduct of Washington County deputy sherriff's under the doctrine of respondeat superior when the alleged tortious conduct is unrelated to the duties of a deputy sheriff and occurs outside of work-related limits of time and space.

Whether the trial court correctly granted summary judgement in favor of Washington County and the Washington County Board of Commissioners on Plaintiff's claim of intentional infliction of emotional distress.

Whether the trial court correctly granted summary judgement in favor of Washington County Board of Commissioners on plaintiff's breach of contract/wrongful termination/unsafe work place claims when plaintiffs failed to exhaust available administrative remedies.

Whether the trial court properly exercised its discretion in denying the Leasons' Motion to amend their complaint to add a complaint of negligent infliction of emotional distress against the defendants.

C0-85-2172**Stuart L. Burniece,
Respondent,**

vs.

**Illinois Farmers Insurance Co.,
petitioner, Appellant.****Opinion Court of Appeals**

Whether a claimant is entitled to receive both prejudgment interest and the No-Fault Act's statutory penalty for an insurer's wrongful refusal to pay basic economic loss benefits?

**DeParcq, Perl, Hunegs, Rudquist &
Koenig and Peter W. Riley and
Frances L. Li.****Rider, Bennet, Egan & Arundel and
Eric J. Magnuson, Louise A. Dovre,
and Jeanne H. Unger****C6-86-1246****In the Matter of the Application for
the Discipline of Roger J. Helder,
Jr., an Attorney at Law of the State
of Minnesota.****Petition for Disciplinary Action**

Briefs not in file.

William J. Wernz**Roger J. Helder****Tuesday 4 November 1986—9:00 AM****C4-86-516****State of Minnesota,
Respondent,**

vs.

**Jeffrey L. Anderson,
Appellant.****Judgment Hennepin County**

Was evidence of another crime allegedly committed by appellant properly admitted?

Was the evidence insufficient as a matter of law to support the verdict of guilty of murder in the first degree since the state failed to prove beyond a reasonable doubt that appellant was not acting in self-defense when he stabbed Michael McArthur?

Thomas Johnson**Anne McDiarmid****C0-85-2091****Garold Eugene Hoven, et al,
Respondents,**

vs.

**Rice Memorial Hospital and
E. Miller, petitioners, Appellants,
Gordon J. Bos, C. Knapper, and
J.K Krause, petitioners, Appellants.****Opinion Court of Appeals**

Did the trial court err in directing a verdict for the defendant-appellants in a medical malpractice case where the plaintiff-respondent presented evidence that his injuries would not normally occur in the absence of negligence and where the respondent brought suit against the entire surgical team and hospital?

Nelson, Larsen & Bowman**Quinlivan, Sherwood, Spellacy &
Tarvestad and Kevin S. Carpenter.
Gislason, Dosland, Hunter & Malecki
and R. Stephen Tillit.****C9-79-50289****In the Matter of the Application
for the Discipline of Irving Shaw,
an Attorney at Law of the State of
Minnesota.****Petition for Disciplinary Action**

What discipline is appropriate for a lawyer who, while on probation since 1980, fails to file Minnesota income tax returns in a timely manner from 1980 through 1984 and has committed additional acts of misconduct?

Whether, in light of mitigating and extenuating circumstances, respondent's actions constituted a sufficient degree of misconduct to warrant indefinite suspension from the practice of law?

William J. Wernz**Thomas J. Flynn and James P. Miley**

SUPREME COURT CALENDAR

Wednesday 5 November 1986—9:00 AM

C1-85-1421

In Re the Marriage of:

Marguerite I. Nardini,
petitioner, Appellant

vs.

Ralph E. Nardini,
Respondent

Chestnut & Brooks and Cort C.
Holten, and Karl L. Cambronne

Robins, Zelle, Larson & Kaplan
and Robert J. Tansey, Jr. and E.
Anne McKinsey

Opinion Court of Appeals

Did the trial court err when it concluded that the value of one-half the stock of Nardini Fire Equipment Company was respondent's non-marital property.

Was the trial court's valuation of Nardini Fire Equipment Company clearly erroneous?

Did the trial court abuse its discretion in its award of temporary maintenance to appellant?

Did the trial court abuse its discretion in denying appellant's request for an award of attorney's fees?

Did the trial court abuse its discretion by adopting an order prepared and submitted at the request of one of the litigants?

C6-86-2

Jostens, Inc.,

Respondent,

vs.

CNA Insurance/Continental Casualty
Co., petitioner, Appellant.

Stapleton, Nolan, & McCall

Meagher, Geer, Markham, Anderson,
Adamson, Flaskamp & Brennan and
Bradley M. Jones, J. Richard Bland,
and William M. Hart.

Opinion Court of Appeals

Whether CNA is entitled to a late notice defense.

In the alternative, whether Jostens is required to share in the costs of defense and settlement of a claim for which it seeks coverage from CNA.

Whether CNA is required to pay prejudgment interest and, if so, whether interest is to be calculated from the date Josten's made payment.

C4-84-1869

In the Matter of the Application for
the Discipline of Clayton E. Parks,
Jr., an Attorney at Law of the state
of Minnesota.

Petition for Disciplinary Action

William J. Wernz

Collins, Buckley, Sauntry & Haugh
and Dan O'Connell

What discipline is appropriate for an attorney who misappropriates client's funds while on probation, and then allegedly covers up such misappropriation?

Should disbarment be imposed on this lawyer who has been a member of the bar for 25 years for a case of temporary conversion of one client's funds, with no permanent loss to the client, and strong mitigating circumstances?

Thursday 6 November 1986—9:00 AM

C3-86-37

Thomas J. Jorissen,
Respondent,

vs.

Barbara J. Miller and Susan
J. Cranston, petitioners,
Appellants.

Green, Merrigan, Johnson & Quayle
and Dudley R. Younkin

Miller & Neary
and Joseph M. Goldberg

Opinion Court of Appeals

Did the trial court have jurisdiction to vacate a satisfied conciliation court judgment?

Can a judgment which is paid and satisfied of record be vacated?

Is the present lawsuit precluded by operation of the principle of Res Judicata?

C2-85-2044

Now Foods, Corporation,
petitioner, Appellant,
vs.

Madison Equipment Co., Inc.,
Respondent.

Opinion Court of Appeals

Lazarus & Kelley

Lindquist & Vennum, and
David G. Newhall and Steven E. Rau

Does Madison have sufficient minimum contacts with Minnesota to permit Minnesota courts to Constitutionally exercise personal jurisdiction over Madison?

Monday 10 November 1986—9:00 AM

C3-85-1503

Reedon of Faribault, Inc.,
d.b.a. Best Western Galaxy
Motor Lodge, Respondent,
vs.

Fidelity and Guaranty Insurance
Underwriters, Inc., petitioner,
Appellant,
Palmer and Cornell, Inc.,
Defendant.

Opinion Court of Appeals

Keating and Peterson

Lasley, Gaughan, Stich & Angell
and Chet D. Deter and Michael S.
Kreidler

Did a Pierringer release of appellant's agent's independent liability release the appellant from claims of vicarious liability?

Was there sufficient evidence in the record to support the jury's finding relative to the appellant's independent negligence?

Is an affirmative defense that is not disclosed to the court or to the adverse party prior to trial, waived?

C5-86-1126

Richard Beer,
Respondent,

vs.

Minnesota Power & Light Company
Appellant,

Order Itasca County

Knetsch & Bang

Douglas W. Peterson and James R.
Habicht

Is Respondents' action barred by the six year statute of limitations pursuant to Minn. Stat. Sec. 541.05?

Wednesday 12 November 1986—9:00 AM

CX-86-990

Westinghouse Electric Corporation and
Thermo King Corporation,
Relators,

vs.

Commissioner of Revenue,
Respondent.

Order Tax Court

Larkin, Hoffman, Daly & Lindgren
and Richard I. Diamond and Gene N.
Fuller

Hubert H. Humphrey and Thomas R.
Muck

On a case submitted on stipulated facts on cross-motions for summary judgment, are additional findings of material fact proper?

Are Relator's claim for refunds of 1972-1976 taxes in excess of the amounts placed at issue barred by the statute of limitations?

Did the Minnesota Legislature make an excessive and improper delegation of authority to the Commissioner to permit or require combined reporting under Minn. Stat. Secs. 290.20, Subd. 1 and/or 290.34, Subd. 2?

Did the method adopted by the Commissioner deny due process?

SUPREME COURT CALENDAR

C0-85-1863

Michael C. Tibbetts,
Respondent,

Jacob E. Forsman

vs.

**Leech Lake Reservation Business
Committee, Relator,
Minnesota Department of Human Services,
Intervenor,
State Treasurer, Custodian of
the Special Compensation Fund,
Respondent.**

Finn & Mattson

**Hubert Humphrey, III and Stephen
B. Masten and Thomas G. Lockhart**

Order Worker's Compensation Fund.

Did the Leech Lake Band of Chippewa Indians waive its sovereign immunity to worker's compensation liability?

If the Leech Lake Band did not waive its sovereign immunity to worker's compensation liability, can the special compensation fund be held liable under Minn. Stat. Sec. 176.183?

If the sovereign immunity was waived, may the Leech Lake Band assert the defense of sovereign immunity in a subsequent action by the Commissioner of Labor?

Does the State of Minnesota and its courts have subject matter jurisdiction to apply the worker's compensation act to the band?

C3-86-264

State of Minnesota,
petitioner, Appellant,

**Hubert H. Humphrey, III, and Thomas
L. Fabel and Mary Magnuson**

vs.

Emanuel A. Serstock
petitioner, Respondent.
Opinion Court of Appeals

Segal & Roston

Does an indictment that alleges only ethical violations of a public employee state a crime under Minn. Stat. Sec. 609.43(2).

Is an indictment valid if it fails to specify the particular acts allegedly done by the Defendant?

SUPREME COURT DECISIONS

Decisions Filed Friday 10 October 1986

Compiled by Wayne O. Tschimperle, Clerk

C5-85-708 David Frankson v. Design Space International, et al., Appellants. Court of Appeals.

Preparation of a defamatory letter and distribution of the letter to a personnel file and to two officers of a company constitutes a qualifiedly privileged publication of a defamatory statement under the facts of this case.

Because of the lack of sufficient evidence of malice, the qualified privilege was not lost.

Where the evidence indicates that there was no full agreement concerning compensation, the reasonable value of services in quantum meruit can be recovered.

Affirmed in part and reversed in part. Scott. J.

Took no part, Simonett, J.

C2-85-1119, C6-85-1141 Safeco Insurance Company, petitioner, Appellant, v. Larry Lindberg, defendant and third party plaintiff, Kim Barrett, Continental Brokers Corporation, et al., third party defendants. Court of Appeals.

Ambiguity in the watercraft exclusion of a homeowner's policy is to be resolved in favor of the insured.

Affirmed. Simonett, J.

CX-85-1238 Terrance Alholm, petitioner, Appellant v. Richard Wilt, d.b.a. Lakeside Bar, petitioner. Court of Appeals.

Requested instructions which erroneously state the applicable law or which give undue prominence and emphasis to particular facts were properly denied by the trial court.

In the absence of prior agreement on the record concerning the method of seating jurors and alternate jurors, failure to employ a

method that results in satisfying the policy considerations underlying the requirements of Minn. R. Civ. P. 47.02 constitutes reversible error even though the applicant failed to establish prejudice.

Affirmed and remanded for a new trial. Kelley, J.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

Order Dated 1 October 1986**Docket Nos. 4264 and 4332**

Johnson Brothers Wholesale Liquor Co.; Intercontinental Packaging Co.; and Twin City Wine Co., Appellants, vs. Commissioner of Revenue, Appellee.

The above-entitled matter was submitted to the Tax Court on a Stipulation of Facts and written briefs without oral argument. The case was assigned to Chief Judge Earl B. Gustafson for decision.

Bert M. Gross and Mark R. Geier, of Phillips, Gross & Aaron, P.A., appeared for appellants.

Thomas K. Overton, Special Assistant Attorney General, appeared for appellee.

The Court, having heard and considered the arguments of counsel and upon all of the files and records herein, now makes the following:

FINDINGS OF FACT

1. Each of the appellants at all times material herein were engaged as wholesalers in the business of selling wine to retail dealers located in Minnesota.
2. For purposes of Minnesota excise taxes on wine and liquor, appellants file a single excise tax return as though they were a single entity.
3. From July, 1980 through December, 1983, in connection with their sale of wine in Minnesota, and pursuant to Minn. Stat. § 340.47, appellants paid excise taxes to the Minnesota Department of Revenue in the sum of \$4,636,465.22.
4. The aforesaid amount exceeded by \$2,855,617.77 the amount which would have been due and payable pursuant to Minn. Stat. § 340.436 had appellants' products been manufactured or produced by a Minnesota farm winery.
5. On February 10, 1984, the appellants filed a claim for refund of excise taxes paid pursuant to Minn. Stat. § 340.47.
6. On August 29, 1984, the Commissioner of Revenue denied appellants' claim for refund.
7. For the extended period from July, 1980 through December, 1984, the total taxable sales of Minnesota farm wines totaled 57,331 liters. This was .0486 percent of the taxable sales of all wines for this period which totaled 117,860,786 liters.
8. The Minnesota excise tax paid during this period on sales of Minnesota farm wines was \$2,499.00. Had these sales been subject to tax under Minn. Stat. § 340.47, the taxes would have been \$4,157.00, an increase of \$1,658.00. The Minnesota excise tax paid on sales of all wine for this period was \$13,650,481.00.
9. For the months of December, 1984, and January, 1985, appellants paid excise taxes in the amounts which would have been payable pursuant to Minn. Stat. § 340.436 had all of appellants' products been manufactured or produced by a Minnesota farm winery. This amount was \$65,700.23 for the month of December, 1984, and \$27,868.93 for the month of January, 1985. The excise tax payable pursuant to Minn. Stat. § 340.47 would have been \$238,257.66 for December, 1984, and \$60,707.26 for January, 1985.
10. On February 15, 1985, the Commissioner of Revenue issued an Order determining that appellants were liable for the taxes they had withheld.
11. During the periods referred to hereinabove, appellants gave consideration to their costs, overhead, profit margin, excise tax

TAX COURT

and other items in setting their prices to wine retailers, but such taxes were not billed as a separate item to the retailers. In instances where retailers failed to pay for wine purchased from appellants, the appellants nevertheless were required to pay the excise tax and did not receive a refund because of their failure to collect an account receivable from a retailer. Appellants include in their overhead an allowance for bad debts.

12. The demand for wine is to some degree elastic in the sense that the demand increases as the price decreases, and appellants therefore claim that they would have been able to sell more wine than they actually sold during the period in question if the excise tax on such wine had been lower.

13. Appellants could have, but did not, carry Minnesota farm wines and did not because this could have put them in direct competition with farm wineries who can sell directly to retailers.

14. Minn. Stat. § 340.436 (1984) imposing a lower excise tax on Minnesota wines is unconstitutional under the Commerce Clause of the United States Constitution.

CONCLUSIONS OF LAW

1. Minn. Stat. § 340.436 (1984) is unconstitutional and therefore invalid during the period in question.
2. The unconstitutionality of Minn. Stat. § 340.436 (1984) does not affect the validity of Minn. Stat. § 340.47.
3. Excise taxes assessed against appellants under Minn. Stat. § 340.47 are valid and proper.
4. The Orders of the Commissioner of Revenue are hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

BY THE COURT,
Earl B. Gustafson, Chief Judge
Minnesota Tax Court

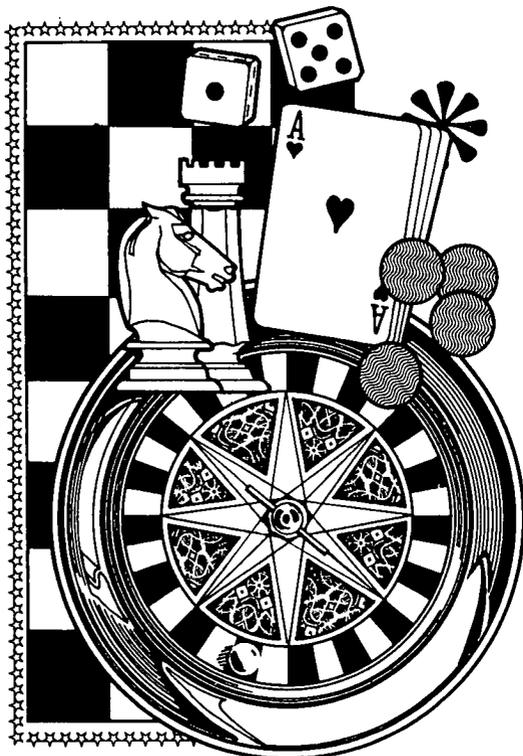
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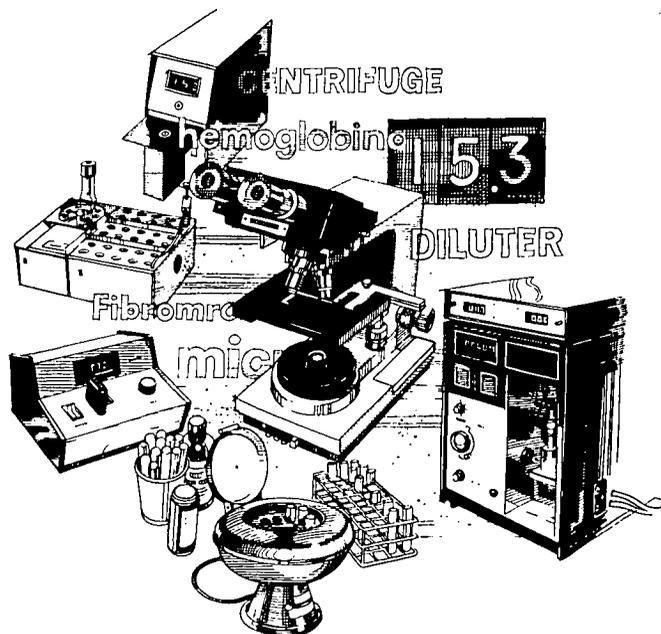
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